

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FRED ANTHONY ARAGON,

Case No. 2:23-cv-00682-ART-NJK

Plaintiff,

v.

SCREENING ORDER ON
FIRST AMENDED COMPLAINT
(ECF No. 15)HENDERSON DETENTION CENTER,
et al.,

Defendants.

Plaintiff, who is incarcerated in the custody of the Henderson Detention Center, has submitted a first amended civil rights complaint pursuant to 42 U.S.C. § 1983 (“FAC”). (ECF No. 15). The Court granted the application to proceed *in forma pauperis* in an earlier order. (ECF Nos. 1, 10). The Court now screens Plaintiff’s FAC under 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (“PLRA”), a federal court must dismiss an

1 incarcerated person's claim if "the allegation of poverty is untrue" or if the action
2 "is frivolous or malicious, fails to state a claim on which relief may be granted, or
3 seeks monetary relief against a defendant who is immune from such relief." 28
4 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon
5 which relief can be granted is provided for in Federal Rule of Civil Procedure
6 12(b)(6), and the court applies the same standard under § 1915 when reviewing
7 the adequacy of a complaint or an amended complaint. When a court dismisses
8 a complaint under § 1915(e), the plaintiff should be given leave to amend the
9 complaint with directions as to curing its deficiencies, unless it is clear from the
10 face of the complaint that the deficiencies could not be cured by amendment. *See*
11 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*
13 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
14 failure to state a claim is proper only if it is clear that the plaintiff cannot prove
15 any set of facts in support of the claim that would entitle him or her to relief. *See*
16 *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this
17 determination, the court takes as true all allegations of material fact stated in the
18 complaint, and the court construes them in the light most favorable to the
19 plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).
20 Allegations of a *pro se* complainant are held to less stringent standards than
21 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
22 While the standard under Rule 12(b)(6) does not require detailed factual
23 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell*
24 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the
25 elements of a cause of action is insufficient. *Id.*

26 Additionally, a reviewing court should "begin by identifying pleadings
27 [allegations] that, because they are no more than mere conclusions, are not
28 entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1 “While legal conclusions can provide the framework of a complaint, they must be
 2 supported with factual allegations.” *Id.* “When there are well-pleaded factual
 3 allegations, a court should assume their veracity and then determine whether
 4 they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
 5 complaint states a plausible claim for relief . . . [is] a context-specific task that
 6 requires the reviewing court to draw on its judicial experience and common
 7 sense.” *Id.*

8 Finally, all or part of a complaint filed by an incarcerated person may
 9 therefore be dismissed *sua sponte* if that person’s claims lack an arguable basis
 10 either in law or in fact. This includes claims based on legal conclusions that are
 11 untenable (e.g., claims against defendants who are immune from suit or claims
 12 of infringement of a legal interest which clearly does not exist), as well as claims
 13 based on fanciful factual allegations (e.g., fantastic or delusional scenarios). *See*
 14 *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989); *see also McKeever v. Block*, 932
 15 F.2d 795, 798 (9th Cir. 1991).

16 **II. SCREENING OF FAC**

17 In the FAC, Plaintiff sues Defendants Officer Cortez, Officer Harris, and Dr.
 18 Vernon for events that took place while Plaintiff was incarcerated at the
 19 Henderson Detention Center. (ECF No. 15 at 1-2). Plaintiff brings two claims and
 20 seeks monetary and injunctive relief. (*Id.* at 4-5).

21 The FAC alleges the following. On December 11, 2022, Plaintiff had fallen,
 22 hit his neck and head, and was knocked out. (*Id.* at 3). Plaintiff was in the
 23 hospital from December 11 through 14, 2022. (*Id.*) On December 16, 2022, Dr.
 24 Vernon put Plaintiff on lower tier and lower bunk restrictions after Plaintiff
 25 returned from the hospital. (*Id.*) Plaintiff alleges that he was given no care other
 26 than Flexeril for pain. (*Id.* at 4).

27 However, on December 25, 2022, Cortez moved Plaintiff to the top tier
 28 without checking with a nurse or a provider. (*Id.* at 3). Plaintiff remained on the

1 top tier for 46 days until he “fell out again.” (*Id.*) Jail officials took Plaintiff to the
2 infirmary for observation. (*Id.*) Jail officials then put Plaintiff in the booking area
3 for 24-hour observation and handcuffed him for 7 hours before clearing him to
4 return to his cell. (*Id.*) Harris took Plaintiff back to the same top tier cell without
5 communicating with the provider about Plaintiff’s lower tier/lower bunk
6 restrictions. (*Id.*)

7 After the second fall, Plaintiff received no care. (*Id.* at 4). In February 2023,
8 jail officials took Plaintiff for x-rays but he received no care for the injury. (*Id.*)
9 In March 2023, Dr. Vernon told Plaintiff that he was waiting for clearance to
10 schedule Plaintiff for a neurology appointment. (*Id.*) On June 12, 2023, jail
11 officials took Plaintiff to get an MRI but Desert Radiology would not give Plaintiff
12 an MRI because of the bullets and fragments in Plaintiff’s body from his prior
13 gunshot wounds. (*Id.*) Dr. Vernon told Plaintiff to see his primary doctor after
14 his release from detention on November 30, 2023. (*Id.*)

15 Plaintiff alleges failure to protect/threat to safety (claim 1) and inadequate
16 medical care (claim 2). (*Id.* at 3-4).

17 After reviewing the original complaint, the Court presumed that Plaintiff
18 was a pretrial detainee at the time of the events. (See ECF Nos. 10, 11). However,
19 based on the allegations in the FAC and a review of Plaintiff’s criminal docket
20 sheet, Plaintiff appears to have been convicted and is serving his sentence in the
21 Henderson Detention Center. Because Plaintiff is a convicted inmate, the Court
22 analyzes his claims under the Eighth Amendment. See *Pierce v. Cty. of Orange*,
23 526 F.3d 1190, 1205 (9th Cir. 2008) (holding that the Eighth Amendment’s bar
24 against cruel and unusual punishment applies to convicted inmates while
25 pretrial detainees are protected by the Fourteenth Amendment’s Due Process
26 Clause). The Court interprets Plaintiff’s allegations as claims for Eighth
27 Amendment unsafe jail conditions (claim 1) and Eighth Amendment deliberate
28 indifference to serious medical needs (claim 2).

1 **A. Unsafe Jail Conditions**

2 The treatment a convicted inmate receives during incarceration and the
3 conditions under which he is confined are subject to scrutiny under the Eighth
4 Amendment. *Helling v. McKinney*, 509 U.S. 25, 31 (1993). The Eighth
5 Amendment imposes duties on prison/jail officials to take reasonable measures
6 to guarantee the safety of inmates and to ensure that inmates receive adequate
7 food, clothing, shelter, and medical care. *Farmer v. Brennan*, 511 U.S. 825, 832
8 (1994). To establish violations of these duties, the inmate must establish that
9 prison/jail officials were deliberately indifferent to serious threats to the inmate's
10 safety. *Id.* at 834. To demonstrate that a prison/jail official was deliberately
11 indifferent to a serious threat to the inmate's safety, the inmate must show that
12 "the official [knew] of and disregard[ed] an excessive risk to inmate . . . safety; the
13 official must both be aware of facts from which the inference could be drawn that
14 a substantial risk of serious harm exists, and [the official] must also draw the
15 inference." *Id.* at 837. Prison/jail officials may not escape liability because they
16 cannot, or did not, identify the specific source of the risk; the serious threat can
17 be one to which all inmates are exposed. *Id.* at 843.

18 The Court finds that Plaintiff fails to state a colorable claim at this time.
19 Plaintiff alleges that Dr. Vernon assigned him to a lower tier and a lower bunk.
20 However, based on the allegations, it does not appear that Cortez knew that
21 Plaintiff had been assigned to a lower tier and a lower bunk for medical purposes.
22 Plaintiff alleges that Cortez moved Plaintiff to a top tier without checking with a
23 nurse or provider. As such, the allegations do not establish that Cortez knew that
24 Plaintiff was supposed to be on a lower tier for medical purposes and then
25 purposefully disregarded an excessive risk to Plaintiff. Additionally, Plaintiff does
26 not allege that Harris knew that Plaintiff was supposed to be on a lower tier for
27 medical purposes. Instead, Plaintiff alleges that Harris took Plaintiff back to
28 Plaintiff's same top tier cell without communicating with the provider. As such,

1 Plaintiff does not allege that Cortez or Harris knew of and disregarded any
 2 excessive risks to Plaintiff. This claim is dismissed without prejudice with leave
 3 to amend.

4 **B. Deliberate Indifference to Serious Medical Needs**

5 The Eighth Amendment prohibits the imposition of cruel and unusual
 6 punishment and “embodies ‘broad and idealistic concepts of dignity, civilized
 7 standards, humanity, and decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102
 8 (1976). A prison/jail official violates the Eighth Amendment when he acts with
 9 “deliberate indifference” to the serious medical needs of an inmate. *Farmer v.*
 10 *Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment
 11 violation, a plaintiff must satisfy both an objective standard—that the deprivation
 12 was serious enough to constitute cruel and unusual punishment—and a
 13 subjective standard—deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978,
 14 985 (9th Cir. 2012), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d
 15 1076, 1082–83 (9th Cir. 2014).

16 To establish the first prong, “the plaintiff must show a serious medical need
 17 by demonstrating that failure to treat [an inmate’s] condition could result in
 18 further significant injury or the unnecessary and wanton infliction of pain.” *Jett*
 19 *v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted). To
 20 satisfy the deliberate indifference prong, a plaintiff must show “(a) a purposeful
 21 act or failure to respond to [an inmate’s] pain or possible medical need and (b)
 22 harm caused by the indifference.” *Id.* “Indifference may appear when prison [or
 23 jail] officials deny, delay or intentionally interfere with medical treatment, or it
 24 may be shown by the way in which prison [or jail] physicians provide medical
 25 care.” *Id.* (internal quotations omitted). When an inmate alleges that delay of
 26 medical treatment evinces deliberate indifference, the inmate must show that the
 27 delay led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm’rs*,
 28 766 F.2d 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without

1 more, is insufficient to state a claim of deliberate medical indifference”).

2 The Court finds that Plaintiff fails to state a colorable claim for deliberate
3 indifference to serious medical needs. Although Plaintiff conclusively states he
4 received “no care” after both falls, his allegations seem to say otherwise. Based
5 on the allegations, after Plaintiff’s first fall, jail officials took Plaintiff to a hospital.
6 It is also unclear to the Court what other care Plaintiff thought he needed and
7 what harm he suffered without that further care. Additionally, after the second
8 fall, jail officials attempted to treat Plaintiff by giving him x-rays and trying to get
9 him an MRI that ultimately did not happen. Plaintiff has not alleged what further
10 care he needs and what harm he suffered without that further care. The Court
11 dismisses this claim without prejudice with leave to amend.

12 **III. LEAVE TO AMEND**

13 Although the Court grants Plaintiff leave to amend, it does not grant
14 Plaintiff leave to amend in any way that he sees fit. Plaintiff has leave to amend
15 to allege additional true facts to show Eighth Amendment unsafe jail conditions
16 and deliberate indifference to serious medical needs. The Court does not give
17 Plaintiff leave to assert new claims.

18 If Plaintiff chooses to file a second amended complaint, he is advised that
19 a second amended complaint replaces the complaint and FAC, so the second
20 amended complaint must be complete in itself. *See Hal Roach Studios, Inc. v.*
21 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he
22 fact that a party was named in the original complaint is irrelevant; an amended
23 pleading supersedes the original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d
24 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a
25 plaintiff is not required to reallege such claims in a subsequent amended
26 complaint to preserve them for appeal). This means that the second amended
27 complaint must contain all facts and claims and identify all defendants that he
28 intends to sue. He must file the second amended complaint on this Court’s

1 approved prisoner-civil-rights form, and it must be entitled “Second Amended
2 Complaint.” Plaintiff must follow the instructions on the form. He need not and
3 should not allege very many facts in the “nature of the case” section of the form.
4 Rather, in each claim, he should allege facts sufficient to show what each
5 defendant did to violate his civil rights. He must file the second amended
6 complaint 30 days from the date of this order. If Plaintiff chooses not to file a
7 second amended complaint curing the stated deficiencies, the Court will dismiss
8 this action without prejudice.

9 **IV. CONCLUSION**

10 It is therefore ordered that the operative complaint is the FAC (ECF No. 15).

11 It is further ordered that the FAC is dismissed in its entirety without
12 prejudice with leave to amend.

13 It is further ordered that, if Plaintiff chooses to file a second amended
14 complaint curing the deficiencies of his FAC, as outlined in this order, Plaintiff
15 will file the second amended complaint within 30 days from the date of entry of
16 this order.

17 It is further ordered that the Clerk of the Court will send to Plaintiff the
18 approved form for filing a § 1983 complaint, instructions for the same, and a copy
19 of his FAC (ECF No. 15). If Plaintiff chooses to file a second amended complaint,
20 he should use the approved form and mark “Second Amended Complaint” in the
21 caption.

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DATED THIS 9th day of November 2023.

Anne Russell Rine

ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE